(12)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक MAC 618/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. (C) No.618 OF 2007

(Hon'ble Mr. Justice Dhirendra Mishra)

APPELLANT (Non-applicant No.3)		United India Insurance Company Limited, Through its Divisional Manager, Divisional Office, Kuchery Chowk, Raipur (C.G.)
	Vs	
RESPONDENTS		1. Smt. Janki Bai, wd/o Late Gyanchand Dewangan, aged 42 years.
Applicant No.1		
Applicant No.2		2. Laharam, S/o Late Gyanchand Dewangan, aged 20 years.
Applicant No.3		3. Ku. Dular, D/o Late Gyanchand Dewangan, aged 16 years.
Applicant No.4		4. Ku. Purnima, D/o Late Gyanchand Dewangan, aged 14 years.
Applicant No.5		5. Ku. Durga, D/o Late Gyanchand Dewangan, aged 10 years.
Applicant No.6		6. Narayan, S/o Shivdayal, aged 65 years.
Applicant No.7		7. Sukhmat, W/o Narayan Dewangan, aged 64 years. Respondent No.3 to 5 are minor through their guardian mother Smt. Janki bai (mother -respondent No.1) Respondent No.1 to 7 all are R/o Vill-Amera, P.S. Palari, District Raipur (C.G.)
Non-applicant No.1		8. Mukesh Verma, S/o Arun Verma, through : Hora Transport Co. Ltd. Fafadih, Raipur, Distt. Raipur (CG) (Driver).
Non-applicant No.2		9. M/s Chawla Road Carriers, Fafdih, Raipur (C.G.)

GRPRJ — FS/246— 2/2007 — 50,000.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Present:
Mr. Dasrath Gupta, for the appellant.

ORAL JUDGMENT
(20.06.2007)

Heard on admission.

This appeal is directed against the award dated 4th December 2006 passed in Claim Case No.6/2006 by the 9th Additional Motor Accident Claims Tribunal, Raipur whereby a sum of Rs.1,67,500/- has been awarded in favour of respondents No.1 to 7 and liability to satisfy the amount of award has been fastened upon the appellant insurance company.

The only ground urged by the appellant in this appeal is that from the evidence available on record it is established that after verification of driving license of respondent No.8 from R.T.O., the same was found to be fake and the said fact has been duly proved by adducing evidence before the claims tribunal. However, the tribunal has held that the owner/insured has not committed any breach of policy condition in allowing the vehicle in question to be driven by the driver, who had no valid & effective driving license and thus, fastened liability upon the appellant.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for the appellant submits that the owner before entrusting the vehicle to respondent No.8 did not take any steps to verify his driving license nor took driving test of the driver and thus, precautions regarding verifying the driving license of a person before entrusting him vehicle was not taken and in these circumstances the liability of satisfying the award could not be fastened upon the appellant insurance company.

I have heard learned counsel for the appellant.

From perusal of the impugned award, it is evident that from the evidence of Rajesh Kumar Bhargav, License Clerk of R.T.O. concerned it is established that License No.7192/02 produced by respondent No.8 was never issued from the R.T.O. office and the same was fake. The tribunal has further recorded that Kanhaiyalal, a witness examined on behalf of respondent No.9/non-applicant No.2, has stated that he is employed as Manager since last 16-17 year with non-applicant No.2, Mukesh Verma was earlier working as driver with Chawla Road Carrier, at the time of appointing him as driver he had seen the license produced by Mukesh Verma, on the said license seal of R.T.O. was present and in these circumstances Mukesh Verma was engaged as driver and therefore, the owner was not aware of the fact that the license produced by Mukesh Verma was fake.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

[redacted]नांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The Hon'ble Apex Court in the matter of National Insurance Co. Ltd. Versus Swaran Singh and others reported in (2004) 3 Supreme Court Cases 297 has thus held:-

> "a fake or forged license is as good as no license but the requirement to establish the defence is that the insurer must prove that the owner was guilty of the willful breach of the conditions of the insurance policy or the contract of the insurance. The defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not, whether the insured did not take reasonable and adequate care and caution to verify the genuineness or otherwise of the licence held by the driver would be a question which will have to be determined in each case.

In the instant case, the tribunal after considering the statement of the witness examined by non-applicant No.2 has arrived at a conclusion that the owner employed Mukesh Verma as driver to

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मामला क्रमांक MAC 618/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक [illegible]क्रांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

drive the vehicle after seeing the driving licence on which the seal of R.T.O. was present and only thereafter the vehicle was entrusted to him. The above finding of the tribunal is strictly in accordance with the law laid down by the Hon'ble Supreme Court in the matter of Swaran Singh (supra).

In the result, there is no illegality or infirmity in the impugned award, the appeal is liable to be dismissed and it is hereby dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge